IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5465 of 2005
Date of decision September 18, 2012

Mohan Lal

..... Petitioner

Versus

Balbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present:- Mr. Ashish Gupta, Advocate
for the petitioner.

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

K. Kannan, J (oral).

1. The petition is against the order allowing a petition under Order IX Rule 7 CPC by the defendant. It appears that were set ex-parte since they did not turn up after an attempt to serve the notices and the bailiff reported that they have refused to receive notice. After the defendants were set ex-parte, the plaintiff had given proof affidavit of his evidence and it appears to have even tendered his written arguments. The contention is that the application for setting aside the ex-parte order under Order IX Rule 7 was not accompanied with any petition under Section 5 of the Limitation Act. The Court has also not examined the report of the process server that the defendant had refused to serve the notice. Learned counsel would contend that in terms of the judgment of the Supreme Court in **Rasiklal Manichchand Dhariwal, and another Vs. M/s M. S. S. Food Products 2012 (1) CCC 695** the petition under Order IX Rule 7 cannot be entertained after the case is reserved for judgment.

2. There is no period of limitation for setting aside the ex-parte order. The contention that residuary Section 137 of the Limitation Act must be invoked in such a case would require to be rejected only because the suit is still pending after the defendant's were set ex-parte. The reliance on the judgment of the Supreme Court is also untenable, for, the case which is concluded by the Court after closing the evidence of both the parties and hearing arguments are not the same as a situation where the plaintiff has tendered his proof affidavit and after the defendants were set ex-parte. Where the trial had not even commenced and the plaintiff wants a decree on the basis of affidavit which is filed, it is only appropriate that the case is taken up and disposed of on merits after giving an opportunity to the defendants to file the written statement. If the Court has exercised its discretion to allow for the ex-parte order to be set aside it is a discretion which is appropriately exercised that calls for no interference.

3. It must be remembered that ex-parte decree has not been passed so far. A party that obtains merely an ex-parte order secures no right. Where a party wants an adjudication on merits there should be every endeavour to see that party's rights in relation to immovable properties are not snatched away by setting up technical obstructions. I find no merit in the civil revision and the same is dismissed.

(K. KANNAN)
JUDGE

September 18, 2012
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